

Response to Restriction Requirement
U.S. Appl. No.: 10/605,883

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TRAVERSAL

Attorney Docket No. 28647.0003
Customer No.: 35161

Applicants respectfully traverse the Restriction of the claims in the present Restriction Requirement of Groups I-IV. The core of the invention is drawn to a sports training device that enables a user to add, remove, or move weight internally within a sport stick at desired locations along its length.

Applicants submit that, according to MPEP § 803, a proper Restriction Requirement must meet two criteria:

- (1) the inventions must be independent or distinct as claimed, and
- (2) there must be a serious burden on the examiner if restriction is not required.

First, with regard to the inventions of Group I-IV being independent or distinct as claimed, Applicants would like to point out, that in order to support a requirement for restriction, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status, or field of search (MPEP § 808.02). The inventions are considered distinct if it can be shown that a combination as claimed:

(A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and

(B) the subcombination can be shown to have utility either by itself or in other and different relations.

The Present Restriction Requirement states inventions of Group I-IV are related as sub-combinations disclosed as usable together in a single combination. Applicants submit the sub-combinations are neither independent nor distinct from each other and are not separately usable, as justified below.

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The claims of Groups I-IV, claims 1-23 are all composition claims drawn to a sports training device that enables a user to internally add or adjust weight to a sport stick, at desired locations along its length, with all claims reciting the same particulars of the subcombination as claimed for patentability. For example, in the invention of Group II (claims 13-18), drawn to a sport kit, there are no elements or additional compositions as claimed that make these claims distinct compared to the composition claim of Groups I, III, and IV. In fact, Group II requires the particulars of Groups I, III, and IV as claimed for patentability.

The Restriction Requirement recites Inventions I-IV are related as sub-combinations, and can be shown to have utility either by itself or in other and different relations, "Group I such as a support arm", "Group II such as a pool cue", "Group III such as a weight kit", and "Group IV such as a replaceable sport handle". Applicants wish to point out that Group I recites a lacrosse stick in claim 3, and as such, Group I could not have a separate utility such as a "support arm". Group II cannot have a separate utility as a "pool cue", because the claims recites a member configured to provide weight. Applicants submit weight training with a "pool cue" is unknown in the art, and further, that hollow pool cues are unknown in the art, making the present training device inapplicable to that use.

The present Restriction Requirement also recites Group III has a separate utility such as a weight kit. Applicants submit this is not a separate utility. The claimed invention is drawn to a training device that enables the user to add or adjust weight, internally, to a sport stick. Therefore, the claimed invention already has the utility as a weight kit. The present Restriction Requirement recites Group IV has a separate utility as "a replaceable sport handle". However, Applicants wish to point out the claimed sport stick with rod, as claimed, is received within the hollow handle of a lacrosse stick and therefore cannot be used as a "replaceable handle".

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In the present Restriction Requirement, Group II is drawn to a sport stick with a rod. Applicants argue claims in all Groups I-IV recite a sport stick with a rod, (claims 1, 9, 13, 20). As such, Applicants submit Group II is not a distinct Invention. Also, in the present Restriction Requirement, Group IV is drawn to a sport stick with an end cap. Again, claims in all Groups I-IV recite a sport stick with an end cap (claims 4, 11, 14, and 19), Applicants again submit Group IV is therefore not a distinct Invention. In short, all Restriction Groups are drawn to the same elements and compositions.

With regard to the criteria of a "serious burden" on the Examiner if restriction is not required. Applicants wish to argue Groups I-IV are all drawn to Class 473, and only two subclasses within Class 473 (i.e., subclass 505 and subclass 513). On the USPTO.gov web-site, Class 473, subclass 505 has less than fifty issued patents and Class 473, subclass 513 merely discloses around one hundred issued patents. Further, the same patentable issues would necessarily be involved with the Examination of all four Restriction Groups, all of which are drawn to composition claims. Therefore, Applicants submit there is clearly no burden searching all Groups I-IV, and further, that such search itself would not be burdensome in any event.

In this Restriction Requirement, the Examiner has appropriately not claimed there is a serious burden in examining all of these claims drawn to Restriction Groups I-IV. Applicants therefore submit a restriction requirement is not proper (see MPEP § 806.05 (h)).

For these reasons, Applicants respectfully request the Examiner to reconsider the restriction requirement of the present Action, or in the alternative, to at least combine Groups I through IV for examination for the reason that all four groups are limited to Class 473 and closely related subclass 505 and 513.

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If this restriction requirement is made FINAL, Applicants preserve the right of petition from this Requirement for Restriction under 37 C.F.R. §1.144 and Applicants reserve the right to file one or more continuing applications on the withdrawn claims.

AMENDMENTS TO THE DRAWINGS

The present Office Action also recites the drawings, as filed electronically, are not clear. Applicants have refiled the drawings, in response to the Examiner's comments.

The attached sheets of drawings includes Figures 1-10, replaces the original sheets including Figures 1-10. No new matter is included in the replaced figures.

CONCLUSION

In light of the foregoing, Applicants respectfully submit they have addressed each and every item presented by the Examiner in this Restriction Requirement. Refiled Drawings are also included with this response. No new matter has been added. Favorable reconsideration of all of the claims is earnestly solicited. Applicants submit the present application, with the foregoing claims, specification and accompanying remarks, is in a condition for allowance and respectfully request such allowance.

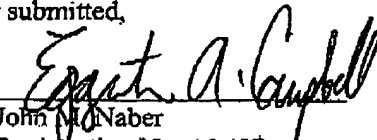
If the Examiner believes there is any issue that could be resolved by a telephone or personal interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

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Applicants hereby petitions for any extension of time that may be required to maintain the pendency of this case, and any required fee for such an extension is to be charged to Deposit Account No. 04-1061.

Respectfully submitted,

for  51,307
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